

**MEMO ENDORSED**

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February 4, 2014

**Via Facsimile**

Judge Nelson S. Román  
United States Courthouse  
300 Quarropas Street  
White Plains, New York 10601-4150

Pre-motion Conference scheduled for  
March 19, 2014 at 12:00 pm. Opposing  
counsel to state position in writing (not  
to exceed 3 pages) by March 12, 2014.  
Dated: Feb. 10, 2014  
White Plains, NY

Re: Rose Savio v. Delpozzo, Nissan Motor Co., Ltd.,  
Nissan North America, Inc. and Motors Group, Inc.  
13 CIV 5606 (NSR)  
Our File No. 62112.0059

**SO ORDERED:**

 2/10/14  
HON. NELSON S. ROMÁN  
UNITED STATES DISTRICT JUDGE

Dear Judge Román:

We represent defendant Motors Group, Inc. ("MG") in this product liability matter. In accordance with Section 3(A)(ii) of Your Honor's Individual Rules of Practice in Civil Cases, we respectfully submit this letter request for a pre-motion conference seeking leave to file a pre-answer motion to dismiss plaintiffs' sixth cause of action sounding in breach of warranties as time-barred, pursuant to F.R.C.P. 12(b)(6).

Plaintiffs seek compensatory and punitive damages based upon product liability claims regarding a 1999 model year Nissan Pathfinder vehicle. Plaintiffs' causes of action sound in design defect, failure to warn, negligence and breach of warranties.

The subject vehicle was assembled and sold by putative defendant Nissan Motor Co., Ltd. ("NML") to the United States distributor, putative defendant Nissan North America, Inc. ("NNA"),<sup>1</sup> which then sold the subject vehicle to the retail dealer, defendant MG. Subsequently, on May 1, 1999, defendant MG sold the subject vehicle to the retail purchaser, defendant Matthew Delpozzo.<sup>2</sup> Each of these transactions occurred more than 14 years before plaintiffs filed suit on August 9, 2013.

The statute of limitations for a breach of warranty claim, whether express or implied, is four (4) years from the date the defendant sold and delivered the vehicle and its allegedly defective components to its first purchaser, irrespective of the date of the accident at issue or when plaintiffs may have come into contact with the vehicle. Uniform Commercial Code § 2-725; *U.S. Heller v. Suzuki Motors*, 64 N.Y.2d 407 (1985); *Donuk v. Sears, Roebuck &*

<sup>1</sup> Although they are named as defendants in the complaint, NML and NNA have no record of being served with process to date.

<sup>2</sup> Pursuant to a Notice of Partial Voluntary Dismissal Pursuant to Rule 41(a), dated January 3, 2014 and so-ordered by the Court on January 7, 2014, plaintiffs' claims against defendants Kaitlyn M. Delpozzo, Louis V. Delpozzo, Francine Delpozzo and Matthew Delpozzo have been dismissed.



Judge Nelson S. Román  
February 4, 2014  
Page 2

*Co.*, 52 A.D.3d 456 (2d Dept. 2008); *Schrader v. Sunnyside Corp.*, 297 A.D.2d 369 (2d Dept. 2002); *Csoka v. E.W. Bliss*, 168 A.D.2d 664 (2d Dept. 1990); *Fazio v. Ford Motor Co.*, 69 A.D.2d 896 (2d Dept. 1979); *Vanata v. Delta International Mach. Corp.*, 269 A.D.2d 175 (1st Dept. 2000).

Therefore, as a matter of law, plaintiffs' sixth cause of action sounding in breach of warranties is untimely as against defendant MG, putative defendant NML, and putative defendant NNA.

We respectfully request a pre-motion conference for leave to file a pre-answer motion, pursuant to F.R.C.P. 12(b)(6), to dismiss plaintiffs' sixth cause of action sounding in breach of warranties, unless plaintiffs agree to the voluntary dismissal of all breach of warranty claims against MG, NML and NNA with prejudice. Currently, the deadline for MG to answer or move with respect to the summons and complaint is February 7, 2014. We note that, pursuant to Section 3(a)(ii) of Your Honor's Individual Rules of Practice in Civil Cases, this application for a pre-motion conference serves to stay the deadline for defendant MG to move or answer, with a new deadline to be set at the conference.

Thank you for your consideration.

Respectfully submitted,

Homer B. Ramsey (HR9760)

cc: Stephen M. Smith, Esq. (by fax)